

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

MEGANNE NATALE and CHELSEA  
CHENG, individually and on behalf of all  
others similarly situated,

Plaintiffs,

v.

9199-4467 QUEBEC INC., d/b/a EARTH  
RATED,

Defendant.

Case No. 2:21-cv-6775-JS-SIL

Hon. Joanna Seybert

**[PROPOSED] ORDER GRANTING PRELIMINARY  
APPROVAL OF CLASS ACTION SETTLEMENT**

Plaintiffs Meganne Natale and Chelsea Cheng in this action have filed an unopposed motion for preliminary approval of a Class Action Settlement (the “Settlement”), conditional certification of the Settlement Class for settlement purposes, appointment of Class Counsel and Class Representatives for settlement purposes, approval of the Notice Plan for providing Class Notice, and approval of the proposed Settlement Administrator. The Court has reviewed and considered the Settlement Agreement and the accompanying exhibits.

IT IS HEREBY ORDERED as follows:

1. Defined Terms. This Order incorporates by reference the definitions in the Settlement Agreement, and all terms used in this Order shall have the same meanings as set forth in the Settlement Agreement.

2. Preliminary Approval of Settlement: The Court preliminarily approves the Settlement, and the Settlement’s terms, as fair, reasonable, and adequate under Rule 23, subject to further consideration at the Final Approval Hearing described below. The Court also preliminarily

finds that the Settlement Agreement has been reached as a result of an arm's-length negotiations of disputed claims.

3. Class Definition: Pursuant to Fed. R. Civ. P. 23, the Court preliminarily certifies, solely for purposes of effectuating the Settlement, the following Settlement Class:

all persons in the United States who purchased one or more units of Earth Rated Certified Compostable Poop Bags (the "Certified Compostable Poop Bags") during the class period which extends from October 28, 2015 through the date of class notice (the "Class Period"), excluding persons who purchased for the purpose of resale or for purposes other than personal use.

4. Class Representatives and Class Counsel: The Court preliminarily appoints the law firm of Bursor & Fisher, P.A. as Class Counsel for the Settlement Class. The Court preliminarily appoints Meganne Natale and Chelsea Cheng as the Class Representatives.

5. Preliminary Class Certification for Settlement Purposes Only: The Court preliminarily finds, solely for purposes of the Settlement, that the Rule 23 criteria for certification of the Settlement Class exists in that: (a) the Settlement Class is so numerous that joinder of all Settlement Class Members in the Action is impracticable; (b) there are questions of law and fact common to the Settlement Class that predominate over any individual questions; (c) the claims of the Class Representatives are typical of the claims of the Settlement Class; (d) the Class Representatives and Class Counsel have and will continue to fairly and adequately represent and protect the interests of the Settlement Class; and (e) a class action is superior to all other available methods for the fair and efficient adjudication of the controversy.

6. In addition, the Court finds that preliminary certification of the Settlement Class is appropriate when balanced against the risks and delays of further litigation.

7. Class Notice: The Court approves the form and content of the proposed Email Notice and Website Notice (Exhibits B-C to the Settlement Agreement) and Claim Form (Exhibit

A to the Settlement Agreement). The Court further finds that the method of dissemination of notice to the Settlement Class, in the manner set forth in the Settlement Agreement, as well as the establishment of a settlement website, satisfies Rule 23, due process, and constitutes the best notice practicable under the circumstances. The Notice Plan set forth in the Settlement is reasonably calculated to apprise the Settlement Class of the pendency of the Action, the class certification for settlement purposes only, the terms of the Settlement and benefits afforded, the Settlement Class Members' rights including the right to opt-out of or object to the Settlement and the deadlines and procedures for doing so, the deadline, procedures and requirements for submitting a claim for monetary compensation pursuant to the Settlement, Class Counsel's application for the Fee Award and Service Awards for the named Plaintiffs, the time, place and right to appear at the Final Approval Hearing, and other pertinent information about the Settlement and the Settlement Class Members' rights. The Court authorizes the Parties to make non-material modifications to the Class Notice and Claim Form prior to mailing if they jointly agree that any such changes are appropriate.

8. No later than the date specified in Paragraph 21 below, the Settlement Administrator shall provide notice to the Settlement Class pursuant to the terms of the Agreement. The Parties shall coordinate with the Settlement Administrator to provide notice to the Settlement Class pursuant to the terms set forth therein.

9. Administration: The Court appoints JND Legal Administration as the Settlement Administrator. The Settlement Administrator is directed to perform all settlement administration duties set forth in, and pursuant to the terms and time periods of, the Settlement, including mailing of the CAFA Notice, implementing and maintaining the Settlement Website, disseminating notice to the Settlement Class, the processing, review and determination of timely submitted and proper

claims under the Settlement, and the submission of any declarations and other materials to counsel and the Court, as well as any other duties required under the Settlement Agreement.

10. Exclusion from Class. Any Class Member who wishes to be excluded from the Class must send to the Settlement Administrator a Request for Exclusion either by (1) U.S. Mail postmarked no later than the Objection/Exclusion Deadline or (2) electronic submission. The Request for Exclusion must be from the Settlement Class Member and include (a) their full name; (b) current address; (c) a clear statement communicating that they elect to be excluded from the Settlement Class, do not wish to be a Settlement Class Member, and elect to be excluded from any judgment entered pursuant to the Settlement; (d) their signature; and (e) the case name and case number of the Action. A Settlement Class Member can exclude only himself or herself from the Settlement Class, and shall not be allowed to request that another individual or group be excluded. “Mass” or “class” opt-outs are not permitted. Any request for exclusion must be sent to the Settlement Administrator no later than the Objection/Exclusion Deadline, which is specified in Paragraph 21 below. Not later than seven (7) business days before the Final Approval Hearing, the Settlement Administrator shall provide to Class Counsel and Defendant’s Counsel a complete list of Settlement Class Members requesting exclusion from the Settlement together with copies of the requests for exclusion, to be filed with the Court by Class Counsel.

11. If the proposed Settlement is finally approved, any potential Settlement Class Member who has not submitted a timely written request for exclusion on or before the Objection/Exclusion Deadline shall be bound by all terms of the Settlement Approval Order and Final Judgment, even if the potential Settlement Class Member previously initiated or subsequently initiates any litigation against any or all of the Released Parties relating to Released Claims. All persons or entities who properly exclude themselves from the Settlement Class shall

not be Settlement Class Members and shall relinquish their rights or benefits under the Settlement, should it be approved, and may not file an objection to the Settlement or be entitled to any settlement benefits.

12. Objections: Any Settlement Class Member who has not filed a timely written request for exclusion may object to the fairness, adequacy, or reasonableness of the Settlement, the requested Fee Award, and/or Plaintiffs' Service Awards.

13. Any Class Member who wishes to object to the Settlement Agreement must timely serve a written objection to the Settlement Administrator by the Objection/Exclusion Deadline, which is specified in Paragraph 21 below. The objection must: (1) contain a caption or title that identifies it as an "Objection to Class Settlement in *Natale et al. v. 9199-4467 Quebec Inc. d/b/a Earth Rated*"; (2) contain contact and address information for the objecting Settlement Class Member; (3) provide documents sufficient to establish the person's standing as a Settlement Class Member (either verification under oath of the date and location of a purchase of Certified Compostable Poop Bags within the Class Period or a receipt reflecting such purchase); (4) provide a written statement of all grounds for the objection accompanied by any legal support for such objection; (5) provide all facts supporting the objection and the legal grounds on which the objection is based, including all citations to legal authority and evidence supporting the objection; and (6) provide the name and contact information of any and all attorneys representing, advising, or in any way assisting the objector in connection with the preparation or submission of the objection or who may profit from the pursuit of the objection.

14. Any objecting Settlement Class Member may appear, in person or by counsel, at the Final Approval Hearing to explain why the proposed Settlement should not be approved as fair, reasonable, and adequate, or to object to any motion by Class Counsel for the Fee Award or

Service Awards. To appear, the objecting Settlement Class Member must, by the deadline set by the Court, file with the Clerk of the Court and serve upon all counsel designated in the Class Notice, a Notice of Intention to Appear at the Final Approval Hearing. The Notice of Intention to Appear must include copies of any papers, exhibits or other evidence and the identity of witnesses that the objecting Settlement Class Member (or the objecting Settlement Class Member's counsel) intends to present to the Court in connection with the Final Approval Hearing. Any Settlement Class Member who does not provide a timely Notice of Intention to Appear in accordance with the deadline and other requirements set forth in this Settlement Agreement and Class Notice shall be deemed to have waived any right to appear, in person or by counsel, at the Final Approval Hearing.

15. Any Settlement Class Member who has not properly filed a timely objection in accordance with the deadline and requirements set forth in this Order and Class Notice shall be deemed to have waived any objections to the Settlement and any adjudication or review of the Settlement by appeal or otherwise.

16. Preliminary Injunction. All Settlement Class Members and/or their representatives who do not timely and properly exclude themselves from the Settlement Class are barred and enjoined from directly, indirectly, derivatively, in a representative capacity, or in any other capacity filing, commencing, prosecuting, maintaining, intervening in, participating in, conducting, or continuing any action in any forum (state or federal) as individuals, class members, putative class members, or otherwise against the Released Parties (as defined in the Settlement) in any court or tribunal asserting any of the Released Claims (as defined in the Settlement), and/or from receiving any benefits from any lawsuit other than this one, administrative or regulatory proceeding, or order in any jurisdiction, arising out of, based on, or relating to the Released Claims.

In addition, all such persons are hereby barred and enjoined from filing, commencing, or prosecuting a lawsuit against Defendant (or against any of the Released Parties) as a class action, a separate class, or group for purposes of pursuing a putative class action (including by seeking to amend a pending complaint to include class allegations or by seeking class certification in a pending action in any jurisdiction) on behalf of Settlement Class Members who do not timely exclude themselves from the Settlement Class, arising out of, based on, or relating to the Released Claims. Pursuant to 28 U.S.C. §§ 1651(a) and 2283, the Court finds that issuance of this preliminary injunction is necessary and appropriate in aid of the Court's continuing jurisdiction and authority over the Action.

17. Termination of Settlement. If the Court does not grant final approval to the Settlement, or for any reason the Parties fail to obtain a Settlement Approval Order and Final Judgment as contemplated in the Settlement, or the Settlement is terminated pursuant to its terms for any reason, or the Final Settlement Approval Date does not occur for any reason, then the Parties shall be restored to their respective pre-settlement positions in the Action, including with regard to any agreements concerning tolling and similar agreements, and this entire Settlement shall be null and void, shall have no further force and effect with respect to any Party in the Action, and shall not be offered in evidence or used in any litigation for any purpose, including the existence, certification, or maintenance of any purported class or Defendant's liability with respect to the claims that are, were or could have been asserted in the Action. In the event of such, this Settlement and all negotiations, proceedings, documents prepared, and statements made in connection with it shall be without prejudice to the Parties, and shall not be deemed or construed to be an admission or confession by any Party of any fact, matter, or proposition of law, and shall

not be used in any manner for any purpose, and all Parties to the Action shall stand in the same position as if this Agreement had not been negotiated, made, or filed with the Court.

18. In the event of termination, the terminating Party shall cause the Settlement Administrator to post information regarding the termination on the Settlement Website.

19. Alteration of Exhibits. Class Counsel and Defendant's Counsel are hereby authorized to use all reasonable procedures to further the administration of the Settlement that are not materially inconsistent with this Order or the Settlement, including making, without further approval of the Court, minor changes to the form or content of the Notice Plan and other exhibits that they jointly agree are reasonable or necessary.

20. Retaining Jurisdiction. This Court shall maintain continuing jurisdiction over these settlement proceedings to ensure the effectuation thereof for the benefit of the Settlement Class, and for any other necessary purpose.

21. Settlement Deadlines. Based on the foregoing, the Court sets the schedule below for the Final Approval Hearing and the actions which must precede it. If any deadline set forth in this Order falls on a weekend or federal holiday, then such deadline shall extend to the next business day. These deadlines may be extended by order of the Court, for good cause shown, without further notice to the Settlement Class. Settlement Class Members must check the Settlement website regularly for updates and further details regarding this Settlement:

<u>Event</u>	<u>Suggested Date/Deadline Pursuant To Settlement</u>	<u>Date Ordered By Court</u>
Notice Date	30 days after the Preliminary Approval Order	
Motion for Final Approval of Settlement	45 days prior to Final Approval Hearing	
Application for the Fee Award and Service Awards	45 days prior to Final Approval Hearing	



<b><u>Event</u></b>	<b><u>Suggested Date/Deadline Pursuant To Settlement</u></b>	<b><u>Date Ordered By Court</u></b>
Objection/Exclusion Deadline	30 days prior to Final Approval Hearing	
Deadline to submit notices of appearance for the Final Approval Hearing	30 days prior to Final Approval Hearing	
Reply in Support of Final Approval Motion and responses to any objections	7 days prior to Final Approval Hearing	
Reply in Support of Application for Fee Award and Service Awards and responses to any objections	7 days prior to Final Approval Hearing	
Class Counsel submits declaration(s) from the Settlement Administrator (1) stating the number of claims, requests for exclusion, and objections to date and (2) attesting that Class Notice was disseminated in a manner consistent with the Settlement or otherwise required by the Court.	7 days prior to Final Approval Hearing	
Final Approval Hearing	132 days after Notice Date, or as soon thereafter as may be heard by the Court	
Claims Deadline	45 days after Settlement Approval Order and Final Judgment	

IT IS SO ORDERED, on \_\_\_\_\_  
(date)

\_\_\_\_\_  
The Honorable Joanna Seybert  
United States District Judge